

(6) Provide assistance, as appropriate, to civilian employers of Service members who are covered by the provisions of 38 U.S.C. chapter 43 and individuals who apply for uniformed service.

(7) Cooperate with the DoL in discharging its responsibilities to assist persons with employment and reemployment rights and benefits.

(8) Cooperate with OPM in carrying out its placement responsibilities under 38 U.S.C. chapter 43.

**§ 104.6 Procedures.**

The Secretaries of the Military Departments and the Commandant of the Coast Guard shall:

(a) Inform individuals who apply for uniformed service and members of a Reserve component who perform or participate on a voluntary or involuntary basis in active duty, active duty for special work, initial active duty for training, active duty for training, inactive duty training, annual training and full-time National Guard duty, of their employment and reemployment rights, benefits, and obligations as provided under 38 U.S.C. chapter 43 and described in Appendix A of this part. Other appropriate materials may be used to supplement the information contained in Appendix A of this part.

(1) Persons who apply for uniformed service shall be advised that DoD strongly encourages applicants to provide advance notice in writing to their civilian employers of pending uniformed service or any absence for the purpose of an examination to determine the person's fitness to perform uniformed service. Providing written advance notice is preferable to verbal advance notice since it is easier to establish that this basic prerequisite to retaining reemployment rights was fulfilled. Regardless of the means of providing advance notice, whether verbal or written, it should be provided as early as practicable.

(2) Annually and whenever called to duty for a contingency operation, advise Service members who are participating in a Reserve component of:

(i) The requirement to provide advance written or verbal notice to their civilian employers for each period of

military training, active and inactive duty, or full-time National Guard duty.

(A) Reserve component members shall be advised that DoD strongly encourages that they provide advance notice to their civilian employers in writing for each period of pending uniformed service. Providing written advance notice is preferable to verbal advance notice since it easily establishes that this prerequisite to retaining reemployment rights was fulfilled.

(B) Regardless of the means of providing advance notice, whether written or verbal, it should be provided as early as practicable. DoD strongly recommends that advance notice to civilian employers be provided at least 30 days prior to departure for uniformed service when it is feasible to do so.

(C) The advance notice requirement can be met by providing the employer with a copy of the unit annual training schedule or preparing a standardized letter. The sample employer notification letter in Appendix B of this part may be used for this purpose.

(ii) The 5-year cumulative limit on absences from their civilian employment due to uniformed service and exemptions to that limit.

(iii) The requirements for reporting or submitting application to return to their position of civilian employment.

(iv) Their general reemployment rights and benefits.

(v) The option for continuing employer provided health care, if the employer provides such a benefit.

(vi) The opportunity to use accrued leave in order to perform uniformed service.

(vii) Who they may contact to obtain assistance with employment and reemployment questions and problems.

(b) Inform Service members who are covered by the provisions of 38 U.S.C. Chapter 43, upon completion of an extended period of active duty and before separation from active duty of their employment and reemployment rights, benefits, and obligations as provided under 38 U.S.C. Chapter 43. This shall, as a minimum, include notification and reporting requirements for returning to employment with their civilian employer. While Appendix A of this part provides the necessary information to

satisfy this requirement, other appropriate materials may be used to supplement this information.

(c) Issue orders that span the entire period of service when ordering a member of the National Guard or Reserve to active duty for a mission or requirement. Order modifications shall be initiated, as required, to ensure continuous active duty should the period required to complete the mission or requirement change.

(d) Document the length of a Service member's initial period of military service obligation performed on active duty.

(e) Determine and certify in writing those additional training requirements not already exempt for the 5-year cumulative service limit which are necessary for the professional development, or skill training or retraining for members of the National Guard or Reserve. Once the Secretary concerned certifies those training requirements, performance of uniformed service to complete a certified training requirement is exempt from the 5-year cumulative service limit.

(f) Determine those periods of active duty when a Service member is ordered to, or retained on, active duty (other than for training) under any provision of law because of a war or national emergency declared by the President or Congress. If the purpose of the order to, or retention on, active duty is for the direct or indirect support of the war or national emergency, then the orders of the Service member should be so annotated, since that period of service is exempt from the 5-year cumulative service limit established in 38 U.S.C. Chapter 43.

(g) Determine those periods of active duty performed by a member of the National Guard or Reserve that are designated by the Secretary concerned as a critical mission or critical requirement, and for that reason are exempt from the 5-year cumulative service limit. The authority for determining what constitutes a critical mission or requirement shall not be delegated below the Assistant Secretary level or the Commandant of the Coast Guard. The designation of a critical requirement to gain the necessary experience to qualify for key senior leadership po-

sitions shall be used judiciously, and the necessary experience and projected key leadership positions fully documented. This authority shall not be used to grant exemptions to avoid the cumulative 5-year service limit established by 38 U.S.C. Chapter 43 or to extend individuals in repeated statutory tours. The Assistant Secretary of Defense for Reserve Affairs shall be notified in writing of all occasions in which a Service member is granted more than one exemption for a critical requirement when the additional exemption(s) extend the Service member beyond the 5-year cumulative service limit established in 38 U.S.C. Chapter 43.

(h) When appropriate, ensure that orders to active duty or orders retaining members on active duty specify the statutory or Secretarial authority for those orders when such authority meets one or more of the exemptions from the 5-year cumulative service limit provided in 38 U.S.C. Chapter 43. If circumstances arise that prevent placing this authority on the orders, the authority shall be included in a separation document and retained in the Service member's personnel file.

(i) Ensure that appropriate documents verifying any period of service exempt from the 5-year cumulative service limit are placed in the Service member's personnel record or other appropriate record.

(j) Document those circumstances that prevent a Service member from providing advance notification of uniformed service to a civilian employer because of military necessity or when advance notification is otherwise impossible or unreasonable, as defined in § 104.3.

(k) Designate those officers, as defined in § 104.3, who are authorized by the Secretary concerned to provide advance notification of service to a civilian employer on behalf of a Service member or applicant for uniformed service.

(l) Provide documentation, upon request from a Service member or former Service member, that may be used to satisfy the Service member's entitlement to statutory reemployment rights and benefits. Appropriate documentation may include, as necessary:

(1) The inclusive dates of the initial period of military service obligation performed on active duty.

(2) Any period of service during which a Service member was required to serve because he or she was unable to obtain a release from active duty though no fault of the Service member.

(3) The cumulative length of all periods of active duty performed.

(4) The authority under which a Service member was ordered to active duty when such service was exempt from the 5-year cumulative service limit.

(5) The date the Service member was last released from active duty, active duty for special work, initial active duty for training, active duty for training, inactive duty training, annual training or full-time National Guard duty. This documentation establishes the timeliness of reporting to, or submitting application to return to, a position of civilian employment.

(6) Whether service requirements prevent providing a civilian employer with advance notification of pending service.

(7) That the Service member's entitlement to reemployment benefits has not been terminated because of the character of service as provided in 38 U.S.C. 4304.

(8) When appropriate, a statement that sufficient documentation does not exist.

(m) Establish a central point of contact at a headquarters or regional command who can render assistance to active duty Service members and applicants for uniformed service about employment and reemployment rights, benefits and obligations.

(n) Establish points of contact in each Reserve component headquarters or Reserve regional command, and each National Guard State headquarters who can render assistance to:

(1) Members of the National Guard or Reserve about employment and reemployment rights, benefits and obligations.

(2) Employers of National Guard and Reserve members about duty or training requirements arising from a member's uniformed service or service obligation.

(o) A designated Reserve component representative shall consider, and ac-

commodate when it does not conflict with military requirements, a request from a civilian employer of a National Guard and Reserve member to adjust a Service member's absence from civilian employment due to uniformed service when such service has an adverse impact on the employer. The representative may make arrangements other than adjusting the period of absence to accommodate such a request when it serves the best interest of the military and is reasonable to do so.

#### APPENDIX A TO PART 104—CIVILIAN EMPLOYMENT AND REEMPLOYMENT RIGHTS, BENEFITS AND OBLIGATIONS FOR APPLICANTS FOR, AND SERVICE MEMBERS AND FORMER SERVICE MEMBERS OF THE UNIFORMED SERVICES

##### A. SCOPE OF COVERAGE

1. The Uniformed Services Employment and Reemployment Rights Act (USERRA) which is codified in 38 U.S.C. Chapter 43 provides protection to anyone absent from a position of civilian employment because of uniformed service if:

a. Advance written or verbal notice was given to the civilian employer.

(1) Advance notice is not required if precluded by military necessity, or is otherwise unreasonable or impossible.

(2) DoD strongly encourages Service members and or applicants for service to provide advance notice to their civilian employer in writing for each period of pending uniformed service. Providing written advance notice is preferable to verbal advance notice since it easily establishes that this prerequisite to retaining reemployment rights was fulfilled. Regardless of the means of providing advance notice, whether written or verbal, it should be provided as early as practicable. Also, DoD strongly recommends that Reserve component members provide advance notice to their civilian employers at least 30 days in advance when it is feasible to do so. The advance notice requirement can be met by providing the employer with a copy of the unit annual training schedule or preparing a standardized letter. The sample employer notification letter in Appendix B of this part may be used for this purpose;

b. The cumulative length of absences does not exceed 5 years;

c. The individual reports to, or submits an application for reemployment, within the specified period based on duration of services as described in section D of this Appendix; and,